



CITY OF ROANOKE OFFICE OF THE CITY MANAGER

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July 17, 2006

Honorable C. Nelson Harris, Mayor
Honorable David B. Trinkle, Vice-Mayor
Honorable Alfred T. Dowe, Jr., Council Member
Honorable Beverly T. Fitzpatrick, Jr., Council Member
Honorable Sherman P. Lea, Council Member
Honorable Gwendolyn W. Mason, Council Member
Honorable Brian J. Wishneff, Council Member

Dear Mayor Harris and Members of Council:

Subject: Sale of City Owned Property and
Release of Restrictive Covenants

Background:

The City of Roanoke owns property known as Tract 12, located at the entrance of the Roanoke Centre for Industry and Technology (RCIT). The property is an 11.067 acre parcel located at the intersection of Orange Avenue, NE, and Blue Hills Drive, NE, identified as Tax Map No. 7160113.

A prospective buyer has submitted a concept plan for a proposed commercial development of the property which provides for retail, restaurant, hotel, office, day care, and other commercial uses. The prospective buyer is an entity named Blue Hills Village, LLC. The City desires to sell the property for \$150,000 per acre, subject to the buyer developing the property in substantial conformity with the concept plan. City staff has negotiated a contract of sale with such buyer that provides for the buyer to comply with obligations concerning the development of the property. A copy of such contract is attached to this letter as Attachment A.

To permit the proposed development to occur, the property must be released from the restrictive covenants that are applicable to the property at RCIT. The covenants provide that they can be released if the owners or lessees, other than the City, of more than fifty percent, in area, of the total property that comprises RCIT, consent to such release.

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Considerations:

The concept plan proposes development which is consistent with *Vision 2001-2020* and the *Hollins/Wildwood Area Plan*. Commercial development on this

site at the entrance to RCIT will complement industrial development by providing accessible goods and services near this major employment center. The proposed development is consistent with the current zoning of the property, which is CG, Commercial-General District (conditional).

The restrictive covenants on the subject property need to be released in order for the prospective buyer to develop the property. The covenants were designed to guide the development of large-scale industrial sites and do not accommodate the type of commercial development being considered for Tract 12. Staff is working with the land owners in RCIT to obtain their consent to release the covenants as to Tract 12.

A public hearing is required to consider the sale of the property and to authorize execution of a deed of release releasing the property from the restrictive covenants.

Recommended Action:

Authorize the City Manager to execute a contract for the sale of the property substantially similar to the one attached to this letter.

Authorize the City Manager to execute a Deed of Release that will release the property, Tax Map No. 7160113, from the restrictive covenants applicable to RCIT, once the approvals needed for such a release have been obtained.

Authorize the City Manager to execute such further documents and take such further action as may be necessary to accomplish the above matters and to complete the sale of the above-mentioned property to Blue Hills Village, LLC. The form of all such documents is to be approved by the City Attorney.

Respectfully submitted,



Darlene L. Burcham
City Manager

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c: Mary F. Parker, City Clerk
William M. Hackworth, City Attorney
Jesse A. Hall, Director of Finance
R. Brian Townsend, Director of Planning Building and Economic
Development

CM06-00128

CONTRACT FOR PURCHASE AND SALE OF REAL PROPERTY

This Contract For Purchase and Sale of Real Property (Contract) is dated _____, 2006, by and between the City of Roanoke, Virginia, a Virginia municipal corporation (Seller), and Blue Hills Village, LLC, a Virginia limited liability company (Buyer),

WITNESSETH:

WHEREAS, Seller is desirous of selling certain property and Buyer is desirous of acquiring such property upon the terms and conditions set forth below; and

WHEREAS, Buyer will construct on such property located at the entrance of the Roanoke Centre for Industry and Technology (RCIT) in the City of Roanoke a subdivision allowing for separate ownership and development of the several lots or sites after initial development by Buyer of semi-finished pads, or sites, with roadways, utilities and other infrastructure, exclusive of buildings, in place.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein set forth, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the parties hereto, Seller and Buyer hereby agree as follows:

SECTION 1. DEFINITIONS.

Unless the context otherwise specifies or requires, for the purpose of this Contract, the following terms shall have the meanings set forth in this Section:

Closing: The consummation of this Contract by Seller's delivery of a Deed to the Property to Buyer.

Closing Date: The date provided for in Section 14 hereof for the Closing.

Contemplated Use: The development of the Property by the Buyer or its successors according to the Blue Hills Village Concept Plan dated March 13, 2006, which is attached hereto and made a part hereof as Exhibit 1.

Improvements: Any and all improvements, and all appurtenances thereto, located on the Property at the time of Closing.

Property: The real property located at the entrance of RCIT in the City of Roanoke, Virginia, designated as Tract 12, bearing Official Tax Map No. 7160113, and containing approximately 11.0677 acres and being designated on the attached drawing, which is made a part hereof and marked as Exhibit 2. Such real property is located at the intersection of Orange Avenue and Blue Hills Drive.

Restrictive Covenants: Those restrictive covenants set forth in two Deeds of Restriction, one titled "Deed of Restriction - Roanoke Centre For Industry and Technology" dated December 6, 1983, and recorded in Deed Book 1495, page 1797, and the second titled "Deed of Restriction Addition to Roanoke Centre for Industry and Technology" dated April 2, 1992, and recorded in Deed Book 1656, page 00869, in the Clerk's Office of the Circuit Court for the City of Roanoke, Virginia.

Title Commitment: A commitment for title insurance in favor of Buyer for the Property to be issued by a Title Company.

Title Company: Any nationally recognized title insurance company acceptable to Buyer.

Survey: A current, certified plat of survey of the Property showing all existing construction, all boundary lines, easements, set-back requirements, parking areas, encroachments, the RCIT sign, and such other conditions as might be expected to be shown on a plat prepared by a professional certified engineer for lender approval.

SECTION 2. PURCHASE AND SALE OF PROPERTY.

- A. Seller agrees to sell the Property to Buyer, and Buyer agrees to purchase the Property from Seller, upon all the terms, covenants, and conditions set forth in this Contract.
- B. The purchase price for the Property (Purchase Price) shall be One Hundred Fifty Thousand and no/100 Dollars (\$150,000.00) per acre and a proportionate part of that amount for any fraction of an acre for a total Purchase Price of \$1,660,155.00 or such greater or lesser amount as may be increased or decreased by any change in the acreage of the Property, payable in cash or certified check from Buyer to Seller at Closing.

SECTION 3. EARNEST MONEY DEPOSIT.

Buyer, concurrently with its execution of this Contract, has deposited with Seller a Twenty-five Thousand Dollar and no/100 (\$25,000.00) certified check payable to the Seller as an earnest money deposit (Deposit). On the Closing Date, this check shall be cashed by Seller and applied against the Purchase Price for the Property. In the event Closing occurs or the Seller is entitled pursuant to this Contract to retain the Deposit or a part thereof, Seller shall be entitled to cash this check and retain the money due Seller. In the event Buyer is entitled to a refund of the Deposit or a part of the Deposit, Seller shall promptly either return the certified check to the Buyer or cash such check and return only such percentage of the money as the Buyer may be entitled to under the Contract. Seller hereby agrees to hold, keep, cash, or deliver the Deposit in accordance with the terms and provisions of this Contract. Such Deposit is nonrefundable except only for those specific items otherwise set forth in this Contract.

SECTION 4. CONDITIONS FOR COMPLETION OF CONTRACT.

- A. As a condition precedent to Buyer's obligation to purchase the Property or otherwise to perform any obligation provided for in this Contract, the Seller, as of the Closing shall have complied with the Seller's representations and warranties in Section 13 of this Contract, and the fulfillment to the Buyer's reasonable satisfaction of the Seller's delivery to Buyer on the Closing Date of title to the Property and other documents as prescribed in Section 14(D). As a condition precedent to Seller's obligation to sell the Property or otherwise perform any obligation provided for in this Contract, the Buyer, as of the Closing, shall have complied with the Buyer's representations and warranties in this Contract.
- B. As a condition precedent to Buyer's obligation to purchase the Property, the Buyer and Seller agree to cooperate and use reasonable efforts to remove and/or release the Restrictive Covenants currently applicable to the Property. However, if such Restrictive Covenants are not removed and/or released from the Property by the

Closing Date, the Buyer, at its option, may elect not to purchase the Property by giving the Seller written notice of such election and this Contract will then be deemed to be terminated and Seller shall return seventy-five (75) percent of the Deposit to Buyer, with the Seller retaining the other twenty-five (25) percent of the Deposit to help cover Seller's costs and efforts for tying to remove and/or release such Restrictive Covenants.

- C. Buyer and/or Seller may, at any time on or before the Closing Date, at its election, waive any of the conditions precedent in this Section 4 in writing, and Buyer's and Seller's consummation of the Transaction on the Closing Date shall waive all such conditions precedent.
- D. In the event Closing has not occurred through no fault of the Seller on or before 45 days after the date of this Contract, the Seller, at its election, by written notice given to the Buyer, may terminate this Contract. Such written notice shall give Buyer ten (10) days from the date of such notice in which to deliver the Purchase Price and proceed with Closing. If Closing has not occurred within that ten (10) day period through no fault of the Seller, this Contract shall automatically be terminated without further action. In the event of such termination, the Seller shall retain the full amount of the Deposit and this Contract shall be deemed terminated and of no further force and effect.
- E. Buyer shall have until thirty (30) days after the date of this Contract to complete its due diligence review of the Property (Due Diligence Period) and determine if there are any environmental, geotechnical, or title problems with the Property that would prevent the use of the Property. Should Buyer reasonably determine during such Due Diligence Period that the Property cannot be used by the Buyer due to environmental or title problems, the Buyer shall notify the Seller in writing as soon as possible, but in no event not later than 5 calendar days after the end of such Due Diligence Period, of Buyer's decision to terminate the Contract for such reason. In such case, the Seller shall refund the Deposit and this Contract shall thereupon be terminated and of no further force and effect. However, should Buyer fail to notify Seller as set forth above, then the Deposit shall remain nonrefundable.
- F. In connection with the Buyer's ability to conduct its due diligence review mentioned above, the Seller hereby grants to Buyer, its officers, agents, employees, contractors, subcontractors, licensees, designees, representatives and consultants, a revocable right to enter upon the Property at any time during the due diligence period, upon two (2) working days prior written notice to the Seller, in order to survey, make test borings, and carry out such other examinations, exploratory work, or testings as may be necessary to complete a Phase I and Phase II Environmental Assessments, or geotechnical assessments, of the Property upon the following terms and conditions:
1. If the Buyer exceeds its rights granted under this Section or fails to obtain and maintain the insurance required by this Section 4, the Seller may immediately revoke this right of entry.
 2. Buyer agrees to be responsible for any and all damages resulting from the activity or activities of Buyer, its officers, agents, employees, contractors,

Deleted: 1

subcontractors, licensees, designees, representatives and consultants, on the Property in the exercise of the rights granted under this Section 4. Buyer shall, at its sole cost, promptly and fully restore any land disturbed by the exercise of the rights under this Section 4 to a condition equal to that existing immediately prior to entry on the Property.

3. Buyer agrees and binds itself and its successors and assigns to indemnify, keep and hold the Seller and its officers, agents, employees, volunteers, and representatives free and harmless from any and all liability, claims, causes of action, costs and damages of any type, *including attorney's fees, on account of* any injury or damage of any type to any person or property growing out of or directly or indirectly resulting from any act or omission of Buyer including, but not limited to, Buyer's use of the Property in violation of the provision of this Contract or the exercise of any right or privilege granted by or under this Section 4. In the event that any suit or proceeding shall be brought against the Seller or any of its officers, employees, agents, volunteers, or representatives, at law or in equity, either independently or jointly with Buyer, its officers, agents, employees, contractors, subcontractors, licensees, designees, representatives and consultants, on account thereof, Buyer, upon notice given to it by the Seller or any of its officers, employees, agents, volunteers or representatives will pay all costs of defending the Seller or any of its officers, employees, agents, volunteers or representatives in any such action or other proceeding. In the event of any settlement or any final judgment being awarded against the Seller or any of its officers, employees, agents, volunteers or representatives, either independently or jointly with Buyer, its officers, agents, employees, contractors, subcontractors, licensees, designees, representatives and consultants, then Buyer will pay such settlement or judgment in full or will comply with such order or decree, pay all costs and expenses of whatsoever nature, including attorney's fees, and hold the Seller or any of its officers, employees, agents, volunteers or representatives harmless therefrom.
4. Buyer shall, at its sole expense, obtain and maintain, or have its contractors or representatives obtain and maintain, the insurance set forth below. Any required insurance shall be effective prior to the beginning of any work or other performance by Seller under Section 4. The following policies and coverages are required:
 - (i) Commercial General Liability. Commercial General Liability insurance, written on an occurrence basis, shall insure against all claims, loss, cost, damage, expense or liability from loss of life or damage or injury to persons or property arising out of Buyer's acts or omissions. The minimum limits of liability for this coverage shall be \$1,000,000 combined single limit for any one occurrence.
 - (ii) Contractual Liability. Broad form Contractual Liability insurance shall include the indemnification obligation set forth above.

- (iii) Workers' Compensation. Workers' Compensation insurance covering Buyer's statutory obligation under the laws of the Commonwealth of Virginia and Employer's Liability insurance shall be maintained for all its employees engaged in work under this Section 4. Minimum limits of liability for Employer's Liability shall be \$100,000 bodily injury by accident each occurrence; \$500,000 bodily injury by disease (policy limit); and \$100,000 bodily injury by disease (each employee). With respect to Workers' Compensation coverage, Buyer's insurance company shall waive rights of subrogation against the Seller, its officers, employees, agents, volunteers and representatives.
 - (iv) Automobile Liability. The minimum limit of liability for Automobile Liability Insurance shall be \$1,000,000 combined single limit applicable to owned or non-owned vehicles used in the performance of any work under this Section 4 and shall be written on an occurrence basis.
5. The insurance coverages and amounts set forth above may be met by an umbrella liability policy following the form of the underlying primary coverage in a minimum amount of \$1,000,000. Should an umbrella liability insurance coverage policy be used, such coverage shall be accompanied by a certificate of endorsement stating that it applies to the specific policy numbers indicated for the insurance providing the coverages required by this section, and it is further agreed that such statement shall be made a part of the certificate of insurance furnished by Buyer to the Seller.
6. All insurance shall also meet the following requirements:
- (i) Buyer shall furnish the Seller a certificate or certificates of insurance showing the type, amount, effective dates and date of expiration of the policies. Certificates of insurance shall include any insurance deductibles.
 - (ii) The required certificate or certificates of insurance shall include substantially the following statement: "The insurance covered by this certificate shall not be canceled or materially altered, except after thirty (30) days written notice has been provided to the Risk Management Officer for the City of Roanoke."
 - (iii) The required certificate or certificates of insurance shall name the City of Roanoke, its officers, employees, agents, volunteers, and representatives as additional insureds.
 - (iv) Where waiver of subrogation is required with respect to any policy of insurance required under this Section 4, such waiver shall be specified on the certificate of insurance.

- (v) Insurance coverage shall be in a form and with an insurance company approved the Seller which approval shall not be unreasonably withheld. Any insurance company providing coverage under paragraph 6 shall be authorized to do business in the Commonwealth of Virginia.
- G. Upon the request of Seller, Buyer, its officers, agents, employees, contractors, subcontractors, licensees, designees, representatives and consultants, shall within a reasonable period of time after receipt of any preliminary or final test results or conclusory reports and opinion statements, deliver copies of same to Seller. If Seller so requests, Buyer shall also turn over copies of raw data obtained and any laboratory and observation reports or analyses. Such copies of all the above shall be provided to Seller without charge.
- H. Buyer, its officers, agents, employees, contractors, subcontractors, licensees, designees, representatives and consultants, shall at all times comply with all applicable federal, state, and local laws, rules, and regulations. Buyer, its officers, agents, employees, contractors, subcontractors, licensees, designees, representatives and consultants, prior to exercising any rights under Section 4, shall obtain, at their cost, any and all required permits and/or licenses for any such work.

SECTION 5. BUYER'S AND SELLER'S OBLIGATIONS.

A. Seller agrees that it will do the following:

1. Seller agrees to sell to Buyer the real property located in RCIT in the City of Roanoke, Virginia, designated as Tract 12, bearing Official Tax Map No. 7160113, and containing approximately 11.0677 acres and being designated in Exhibit 2, for the Purchase Price of \$150,000.00 per acre and a proportionate part of that amount for any fraction of an acre for a total Purchase Price of \$1,660,155.00 or such greater or lesser amount as may be increased or decreased by any change in the acreage of the Property.
2. Seller will deliver to the Buyer a deed at closing in accordance with the terms of this Contract.
3. Seller will use reasonable efforts, in cooperation with the Buyer's reasonable efforts, to remove and/or release the Property from the Restrictive Covenants which currently apply to the Property.

B. Buyer agrees and promises that it will do the following:

1. Buyer will purchase the Property from the Seller for the Purchase Price of \$150,000.00 per acre and a proportionate part of that amount for any fraction of an acre for a total Purchase Price of \$1,660,155.00 or such greater or lesser amount as may be increased or decreased by any change in the acreage of the

Property and will make payment in accordance with the terms of this Contract.

2. Buyer will cooperate with Seller in Seller's efforts to remove and release the Property from the Restrictive Covenants mentioned above.
3. Buyer agrees that the Seller may reserve to itself a permanent easement over the Property and/or the Buyer will grant to the Seller a permanent easement and/or right of the Seller to construct, move, and/or maintain a monument and/or sign of a size and appearance equivalent to the sign that is now in the general location of the entrance to RCIT so that such sign will be in the same general location for the purpose of identifying the entrance for the Roanoke Centre for Industry and Technology. Notwithstanding the foregoing, the width of the easement providing for the existing sign or other sign to be constructed on the Property shall not exceed 20 feet in width around the entire sign in addition to the area occupied by the sign itself, together with the easement for ingress and egress which shall not exceed 20 feet in width and will be shown on the Survey. Any replacement sign or monument constructed by Seller on the Property must be located within 10 feet of the existing sign on the Property, all of which shall be reflected on the Survey. The Buyer and Seller agree that the sign will be situated and lettered in a way that identifies Blue Hills Drive, NE, as the entrance to RCIT without indicating that the Property that the Buyer is buying is part of RCIT. Furthermore, the Buyer agrees that the provision of any such easement or right to the Seller shall be at no cost to the Seller, provided, however, that the cost of moving and/or erecting and/or maintaining any such monument or sign shall be sole cost of the Seller and not the Buyer. Any such right includes that right of egress and ingress for the Seller to maintain, move, and/or replace any such monument or sign, all at no cost to the Seller for any such right of ingress or egress.
4. The Buyer agrees to develop the Property in a timely manner and in substantial conformity with the Blue Hills Village Concept Plan dated March 13, 2006, attached hereto as Exhibit 1. Substantial conformity shall mean that the buildings actually built on each lot must be used for the purposes identified on such Plan (i.e., a hotel must be built on the lot where the hotel is shown on such Plan, etc.) However, the size and the placement of buildings on each lot may be changed at the Buyer's or subsequent grantee's or lessee's reasonable discretion, but any such changes must be within the limits allowed by and be subject to all applicable laws, local codes, and ordinances. For clarification purposes, such development of the Property does not include lot 1 shown on the Blue Hills Village Concept Plan that is located in Roanoke County.
5. Buyer agrees to develop any aboveground stormwater management facilities that it may be required to provide or that it may elect to provide and if any part of such a facility is located within 150 feet of a public right-of-way such facility will be developed in a manner that does not detract from the

appearance of the entrance to RCIT and more specifically to include, but not necessarily be limited to the following:

- (a) Such stormwater facilities will not use riprap or other stone for permanent slope stabilization. However, such materials shall be used for erosion sediment control purposes during the construction of such facilities.
 - (b) Such stormwater management facilities will be designed so as not to require permanent fencing around such stormwater facilities.
 - (c) Such stormwater management facilities will be fully landscaped with grass and other appropriate plant material which shall be maintained in a neat appearance by the Buyer or those who may purchase from the Buyer, or be designed as wet detention basins.
 - (d) The slope of any stormwater management facilities basin walls shall not exceed 3:1.
 - (e) Such stormwater management facilities standpipes, where provided, shall be within the embankments and not aboveground.
6. Buyer agrees to have a Survey of the Property performed at Buyer's sole cost and shall provide Seller, at no charge, with a copy of such Survey within 5 business days after completion of such Survey.
- C. Buyer agrees and shall install street trees along both sides of the public street that will be developed within the City of Roanoke. The species and types of trees shall be selected from the list of medium to large street trees in the VDOT approved design manual, Appendix B, Subdivision for Street Design Guide and shall be subject to approval by the City of Roanoke's Public Works Director and there shall be a minimum of 50 feet spacing for any such trees.
- D. Buyer agrees to place in the deeds and contracts of any entities to which Buyer sells or transfers any part or all of the Property that such entities are bound by and subject to the conditions set forth in this Contract and that the conditions and obligations of this Contract will survive the Closing and execution of the deed for the Property, the intent being that the Seller shall be named by the Buyer as a third party beneficiary in all such contracts and deeds and shall be able to enforce the obligations of the Buyer set forth in this Contract on the Buyer or any of the Buyer's subpurchasers and/or grantees until the initial development of each lot and the building thereon in accordance with the Blue Hills Village Concept Plan has been completed as set forth herein. Completion of such initial development of each lot will be deemed to have occurred when a permanent certificate of occupancy for the lot and building thereon has been issued and such lot and building is in accordance with the Blue Hills Village Concept Plan. When such permanent certificate of occupancy has been issued as set forth above, the obligations under this Contract of the then current owner of the lot to which the certificate applies shall be deemed to have been satisfied as to the Seller and no future inclusion of the obligations of this Contract to that

Comment:

specific lot needs to be included in future transfers of such lot. However, the obligations under this Contract shall continue as to any other lots and/or parts of the Property that do not meet the conditions set forth above.

- E. The Buyer agrees that the conditions and obligations of the Buyer under this Contract are conditions and obligations that will be incorporated either directly or by reference in any deed to the Property from the Seller to the Buyer and will survive Closing.

SECTION 6. COMPLIANCE WITH LAWS.

Buyer agrees to comply with all applicable federal, state, and local laws, rules, and regulations.

SECTION 7. NONDISCRIMINATION.

- A. During the performance or term of this Contract and the development and operation of the Property, Buyer agrees as follows:
- i. Buyer will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of Buyer. Buyer agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - ii. Buyer in all solicitations or advertisements for employees placed by or on behalf of Buyer will state Buyer is an equal opportunity employer.
 - iii. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

Buyer will include the provisions of the foregoing Section A (i, ii, and iii) in every subcontract or purchase order of over \$50,000, so that the provisions will be binding upon each subcontractor or vendor.

SECTION 8. ASSIGNMENT.

Buyer agrees not to assign or transfer any part of this Contract without the prior written consent of the Seller, which will not be unreasonably withheld, and any such assignment shall not relieve Buyer from any of its obligations under this Contract.

SECTION 9. INDEMNITY.

Buyer agrees to indemnify and hold harmless the City and their officers, directors, and employees free and harmless for and from any and all claims, causes of action, damages or any liability of any type, including reasonable attorney's fees, on account of any claims by or any

injury or damage to any persons or property growing out of or directly or indirectly resulting or arising in any way out of any actions, omissions, or activities of Buyer or its agents, employees or representatives arising out of or connected in any way to any of the matters involved in this Contract or any performance thereunder.

SECTION 10. FORUM SELECTION AND CHOICE OF LAW.

Comment:

By virtue of entering into this Contract, Buyer agrees and submits itself to a court of competent jurisdiction in the City of Roanoke, Virginia, and further agrees this Contract is controlled by the laws of the Commonwealth of Virginia, with the exception of Virginia's conflict of law provisions which shall not apply, and all claims, disputes and other matters shall be decided only by such court according to the laws of the Commonwealth of Virginia as aforesaid. Buyer further waives and agrees not to assert in any such action, suit or proceeding, that it is not personally subject to the jurisdiction of such courts, that the action, suit or proceeding, is brought in an inconvenient forum or that the venue of the action, suit or proceeding, is improper.

SECTION 11. EASEMENTS.

Buyer promises and agrees to grant and dedicate to the Seller and/or the Western Virginia Water Authority all reasonably necessary easements on Buyer's Property for the construction of infrastructure improvements needed for or benefiting the Property or surrounding areas, including, but not limited to, storm drainage, sanitary sewers, and/or water, all at no cost to the Seller and/or the Western Virginia Water Authority, so long as any such easement for a third party is located within 20 feet of a right-of-way line or property line.

SECTION 12. APPROPRIATION OF FUNDS.

All obligations or funding undertaken by the Seller in connection with the Contract are subject to the availability of funds and the appropriation of such funds by City Council as may be necessary for such obligations or funding. *

SECTION 13. COVENANTS AND WARRANTIES.

- A. In addition to any representations and warranties contained elsewhere in this Contract, Seller warrants and represents that Seller will, in accordance with this Contract, convey title to the Property free and clear of all liens, covenants, conditions, restrictions, right-of-ways, easements, and encumbrances of any kind or character whatsoever, except as noted in this Contract and in the Conditions of Title described in Section 14 below.
- B. The Seller further represents and warrants with respect to the Property that:
 - 1. Title. Seller has good and marketable fee simple title to the Property subject to any restrictions of record. Seller is the sole owner of the Property.
 - 2. Condemnation. Seller has no knowledge of any pending or threatened proceedings for condemnation or the exercise of the right of eminent domain as to any part of the Property or the limiting or denying of any right of access thereto.

insuring Buyer in the amount of the Purchase Price in respect to the Property and that title to the Property is vested in Buyer subject only to the Conditions of Title.

- C. Buyer and Seller shall consummate this transaction on or before a date which is 45 days following the date of this Contract (the "Closing Date"), with the specific Closing date being designated by Buyer in writing to Seller at least five (5) days in advance thereof.
- D. The purchase and sale of the Property shall be closed (the "Closing") at 10:00 A.M. on the Closing Date in the Office of the City Attorney, or at such other location and time as shall be approved by Buyer and Seller.
 - (1) On the Closing Date, Seller shall deliver or cause to be delivered to Buyer the following documents:
 - a) Its duly executed and acknowledged General Warranty Deed conveying to Buyer the Property in accordance with the provisions of this Contract;
 - b) A mechanic's lien affidavit executed by a representative of Seller, satisfactory to the Title Company, and to the effect that no work has been performed on the Property in the one hundred twenty-five (125) days immediately preceding the Closing Date that could result in a mechanic's lien claim, or, if such work has been performed, it has been paid for in full;
 - c) Such evidence and documents including, without limitation, a certified copy of the ordinance adopted by the Seller, as may reasonably be required by the Title Company evidencing the authority of the person(s) executing the various documents on behalf of Seller in connection with its sale of the Property;
 - d) A duly executed counterpart of a Closing Statement;
 - e) Any other items required to be delivered pursuant to this Contract.
- E. At Closing, real property taxes shall be prorated with Buyer being responsible for all periods thereafter.
- F. Buyer shall pay for (i) the cost of all investigations of the Property including but not limited to examination of title and title insurance premiums for issuance of the Title Policy; (ii) all attorney's fees and expenses incurred by legal counsel to Buyer; and (iii) any Grantee's tax and recording costs required to be paid in connection with the recording of the Deed.
- G. Seller shall pay the Grantor's tax, if any, and the expenses of legal counsel for Seller, if any.
- H. Exclusive possession of the Property shall be delivered to Buyer on the Closing Date, subject to the provisions of this Contract.

SECTION 15. CONDEMNATION.

Seller has no actual knowledge of any pending or threatened condemnation of the Property. However, if, after the date hereof and prior to the Closing Date, all or any part of Property is subjected to a bona fide threat of condemnation or condemned or taken by a body having the power of eminent domain or a transfer in lieu of condemnation, Buyer shall be promptly notified thereof in writing and within twenty (20) days after receipt of written notice to Buyer, Buyer may by written notice to Seller elect to cancel this Contract prior to the Closing Date, in which event all parties shall be relieved and released of and from any further duties, obligations, rights, or liabilities hereunder, except that Buyer's Deposit shall be promptly refunded to Buyer and thereupon this Contract shall be deemed terminated and of no further force and effect. If no such election is made by the Buyer to cancel this Contract, this Contract shall remain in full force and effect and the purchase contemplated herein, less any interest taken by condemnation or eminent domain, shall be effected with no further adjustments, and upon the Closing Date, Seller shall assign, transfer, and set over to Buyer all of the right, title, and interest of Seller in and to any awards that have been or that may thereafter be made for any such taking or takings.

SECTION 16. RISK OF LOSS.

Risk of Loss by fire or other casualty shall be upon Seller until Closing is completed.

SECTION 17. COMMISSIONS.

Seller and Buyer each warrant and represent to the other that their sole contact with the other or with the Property regarding this transaction has been directly between themselves and their employees. Seller and Buyer warrant and represent that no person or entity can properly claim a right to a commission, finder's fee, or other compensation based upon contracts or understandings between such claimant and Buyer or Seller with respect to the transaction contemplated by this Contract. Buyer agrees to indemnify the Seller against and to hold it harmless from any claim, loss, cost, or expense, including, without limitation, attorneys' fees, resulting from any claim for a commission, finder's fee, or other compensation by any person or entity based upon such contacts or understandings.

SECTION 18. SELLER'S OPTION TO REPURCHASE.

SECTION 19. REMEDIES

- ## **SECTION 20. NOTICES.**

If to Seller: City of Roanoke, City Manager

364 Noel C. Taylor Municipal Building
215 Church Avenue, SW
Roanoke, Virginia 24011
Fax No. 540-853-1138

With a Copy to: Director Planning, Building, and Economic Development
111 Franklin Plaza, Suite 200
Roanoke, VA 24011
Fax No. 540-853-1213

If to Buyer: Blue Hills Village, LLC
5041-A Benois Road
Roanoke, VA 24014
Attn: John F. Shoulders, Jr., Managing Member

With a Copy to: C. Cooper Youell, IV
Gentry Locke Rakes and Moore
10 Franklin Road, SE, Suite 800
P.O. Box 40013
Roanoke, VA 24022-0013
Fax No. 540-983-9400

Notice shall be deemed delivered upon the date of personal service, two days after deposit in the United States mail, or the day after delivery to a nationally recognized overnight courier.

SECTION 21. TIME.

Time is of the essence in the performance of the parties' respective obligations in this Contract.

SECTION 22. SUCCESSORS AND ASSIGNS.

This Contract shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

SECTION 23. COUNTERPART COPIES.

This Contract may be executed in one or more counterparts, and all such counterparts so executed shall constitute one Contract binding on all of the parties hereto, notwithstanding that all of the parties are not signatory to the same counterpart.

SECTION 24. CONSTRUCTION.

The parties acknowledge that each party and its counsel have reviewed and revised this Contract and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Contract or any amendments or exhibits hereto.

SECTION 25. SEVERABILITY AND SURVIVAL.

If any term of this Contract is found to be invalid, such invalidity shall not affect the remaining terms of this Contract, which shall continue in full force and effect. The parties intend for the provisions of this Contract to be enforced to the fullest extent permitted by applicable law. Accordingly, the parties agree that if any provisions are deemed not enforceable by any court or agency of competent jurisdiction, they shall be deemed modified to the extent necessary to make them enforceable. All terms and conditions of this Contract shall survive Closing.

SECTION 26. COOPERATION.

Each party agrees to cooperate with the other in a reasonable manner to carry out the intent and purpose of this Contract.

SECTION 27. AUTHORITY TO SIGN.

The persons who have executed this Contract on behalf of the parties represent and warrant they are duly authorized to execute this Contract on behalf of their respective entity.

SECTION 28. NONWAIVER.

Each party agrees that any party's waiver or failure to enforce or require performance of any term or condition of this Contract or any party's waiver of any particular breach of this Contract by any other party extends to that instance only. Such waiver or failure is not and shall not be a waiver of any of the terms or conditions of this Contract or a waiver of any other breaches of the Contract by any party and does not bar the nondefaulting party from requiring the defaulting party to comply with all the terms and conditions of this Contract and does not bar the nondefaulting party from asserting any and all rights and/or remedies it has or might have against the defaulting party under this Contract or by law.

SECTION 29. FAITH BASED ORGANIZATIONS.

Pursuant to Virginia Code Section 2.2.-4343.1, be advised that the City does not discriminate against faith-based organizations.

SECTION 30. ENTIRE CONTRACT.

This Contract, together with the exhibits hereto, contains all representations and the entire understanding between the parties hereto with respect to the subject matter hereof. Any prior correspondence, memoranda, or contracts are replaced in total by this Contract and the exhibits hereto. No amendment to this Contract shall be valid unless made in writing and signed by the appropriate parties.

SIGNATURE PAGE TO FOLLOW.

Comment:

Comment:

IN WITNESS WHEREOF, Buyer and Seller have executed this Contract by their authorized representatives.

ATTEST:

CITY OF ROANOKE, VIRGINIA

Mary F. Parker, City Clerk

By _____
Darlene L. Burcham, City Manager

COMMONWEALTH OF VIRGINIA

To-Wit:

CITY OF ROANOKE

The foregoing instrument was acknowledged before me this ____ day of _____, 2006, by Darlene L. Burcham, City Manager for the City of Roanoke, for and on behalf of said municipal corporation.

My commission expires: _____

Notary Public

SEAL

WITNESS/ATTEST:

BLUE HILLS VILLAGE, LLC

Printed Name and Title

By _____

Printed Name and Title

To-Wit:

The foregoing instrument was acknowledged before me this ____ day of _____, 2006, by _____ the _____ of Blue Hills Village, LLC, for and on behalf of said company.

My commission expires:

Notary Public

SEAL

Approved as to Form:

Approved as to Execution:

Assistant City Attorney

Assistant City Attorney

Exhibit 1 to Contract between City and Blue Hills Village, LLC

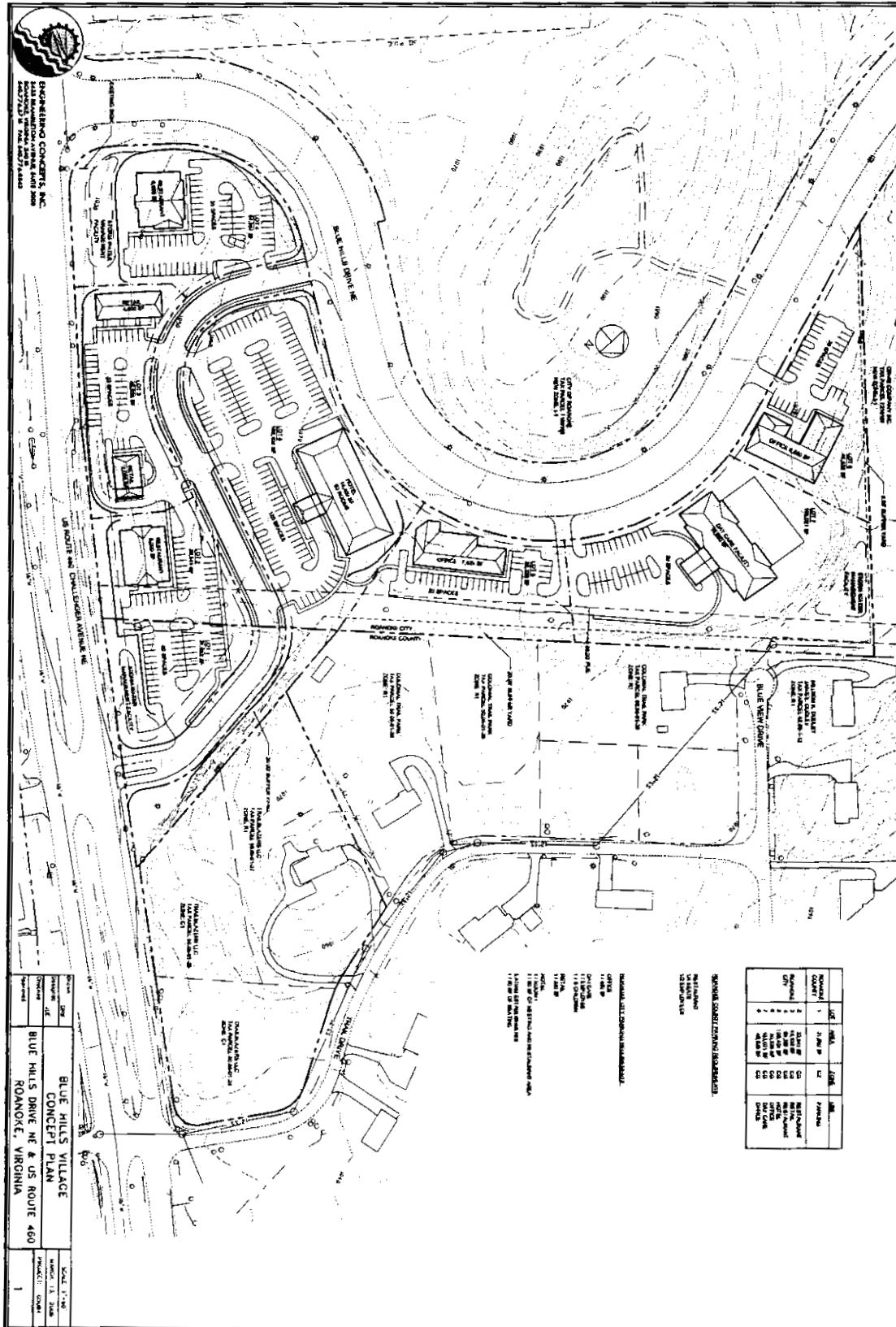


Exhibit 2 to Contract between City and Blue Hills Village, LLC

Tract 12 Roanoke Centre for
Industry and Technology
Tax Map No. 7160113
+/- 11.0677 acres
Property proposed to be
sold to Blue Hills Village, LLC
(hatched area)

Tax No. 7210107

Tax No. 7160102

Tax No. 7160113

Approx. location of
proposed easement
for sign

Tax No. 7160107

Tax No. 7160110

Tax No. 7160101

Tax No.
7160106

Tax No.
7160107

Tax No.
7110106

Tax No. 7110122

Tax No. 7110105

Tax No. 7110125

Tax No. 7110126

BLUE HILLS DRIVE

ORANGE AVENUE

ROANOKE COUNTY
CITY OF ROANOKE